

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 89 OF 2002

A. B. Dalvi & ors. ..Appellants

versus

D. G. Pawar ..Respondent

Mr. R. S. Ghadge for the Appellants.

Mr. S. J. Ghogre for the Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : 9TH JUNE, 2005

P.C. :

1. Heard learned counsel for the appellants and the respondent.

2. Appellants are the original defendants. Plaintiff filed a suit against them for specific performance. The suit was partly decreed by the trial court i.e. a decree for refund of consideration was passed and relief of specific performance was refused. The plaintiff preferred appeal, the appellate court granted him the specific performance and therefore this Second Appeal.

3. Counsel for the appellants contended that the property which was the subject matter of the

suit was a re-grant property and therefore it could not be transferred by the defendants since there was a legal bar, in such a transfer the agreement was void. Therefore, according to him decree for specific performance should not have been granted by the Appellate Court.

4. As against this, counsel for the respondent - plaintiff relied upon judgment of this Court reported in **AIR 2001 BOMBAY 364 Balu Baburao Zarole and ors. vs. Shaikh Akbar Shaikh Bhikan and ors.** wherein this court has held that even if the suit property is not transferable without prior permission of the Collector and if decree for specific performance is granted subject to sanction of Collector, the same is not improper. Counsel for the respondent also pointed out that Appellate Court has followed this judgment and passed an appropriate order i.e. the decree being subject to the sanction of Collector. Therefore, there is no illegality and the legal bar alleged by the counsel for the appellants does not apply. The position as pointed out by the counsel for the respondent is in conformity with the legal position, therefore the objection of the appellants has to be rejected.

5. Secondly, counsel for the appellants contended that possession of the land was never given to the plaintiff and therefore now the court

could not have granted possession. There is no substance in this contention. If the plaintiff is entitled for a decree of specific performance then he is also entitled for a possession. There is no merit in this appeal, the same is dismissed along with civil application. No order as to costs.

9.06.2005

(D.G. DESHPANDE, J.)